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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,269	01/30/2004	Kurt-Robert Kappeler	010751-069	4842
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			EXAMINER AUGHENBAUGH, WALTER	
			ART UNIT 1772	PAPER NUMBER

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/767,269

Applicant(s)

KAPPELER, KURT-ROBERT

Examiner

Walter B. Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) 15-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-14,19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendment made in claim 1 in the Amendment filed May 19, 2006 (Amdt. A) has been received and considered by Examiner.
2. New claims 19 and 20 presented in Amdt. A have been received and considered by Examiner.
3. The replacement abstract presented in Amdt. A has been received and considered by Examiner.
4. Withdrawn claims 15-18 are incorrectly labeled as "(Previously Presented)" in Amdt. A.

### ***Election/Restrictions***

5. This application contains claims 15-18 drawn to an invention nonelected with traverse in the Election filed December 8, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***WITHDRAWN OBJECTIONS***

6. The objection to the abstract made of record in paragraph 3 of the previous Office Action mailed February 23, 2006 has been withdrawn due to Applicant's amendments in the abstract in Amdt. A.

### ***REPEATED REJECTIONS***

#### ***Claim Rejections - 35 USC § 102***

7. The 35 U.S.C. 102 rejection of claims 1, 3 and 4 made of record in paragraph 5 of the previous Office Action mailed February 23, 2006 has been repeated for the reasons previously

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made of record, and for the following reason that addresses the amendment made in claim 1 in Amdt. A: the marking section taught by Stone et al. (radiopaque marker, col. 5, lines 43-50) comprises a character since any marking is a character because a character is a graphic symbol used in writing or printing as evidenced by definition 1b of Merriam-Webster Online Dictionary. Furthermore, text and numbers fall within the scope of the teaching of “markers” at col. 5, line 44 of Stone et al.

***Claim Rejections - 35 USC § 103***

8. The 35 U.S.C. 103 rejections of claims 5-14 made of record in paragraphs 7-13 of the previous Office Action mailed February 23, 2006 have been repeated for the reasons previously made of record, taking into account the reason that addresses the amendment made in claim 1 in Amdt. A provided above.

***NEW REJECTIONS***

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Stone et al. (USPN 5,843,027).

Stone et al. teach the hose as discussed above in regard to claim 1. Text and numbers fall within the scope of the teaching of “markers” at col. 5, line 44 of Stone et al. The recitations “the at least one marking section comprises a date or a production number” of claim 19 and “the at

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least one marking section indicates a material” of claim 20 are intended use phrases that have not been given patentable weight, since it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987).

### ***Response to Arguments***

11. Applicant’s arguments regarding the 35 U.S.C. 102 rejection of claims 1, 3 and 4 have been fully considered but are not persuasive. Applicant has not explained on page 9 of Amdt. A how Applicant’s argument including “... proximal and/or distal regions...” overcomes the rejection of record. Claim 1 does not require that “the marker bands include numbers and/or characters that provide information about a characteristic of the sheath” as Applicant argues. Applicant’s argument that the markers of Stone et al. are “not ‘readable’ using X-rays” is unsupported.

12. Applicant’s arguments regarding the 35 U.S.C. 103 rejections of claims 5 and 7-13 have been fully considered but are not persuasive. Applicant’s arguments regarding these rejections depend entirely upon Applicant’s arguments regarding the 35 U.S.C. 102 rejection of claims 1, 3 and 4 that have been addressed above in this Office Action.

13. Applicant’s arguments presented on pages 10-11 of Amdt. A regarding the 35 U.S.C. 103 rejection of claim 14 have been fully considered but are not persuasive. Applicant’s argument on page 10 of Amdt. A that “[c]learly, Stone does not suggest providing the proximally- and distally-located marker bands in a longitudinally spaced relationship with one another in a recurring mode of arrangement” is unsupported.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

08/07/06

WBA



JENNIFER C. MCNEIL  
SUPERVISING PATENT EXAMINER

8/7/06